THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 31594 of 1997

DATED: 26-04-2007

Between:-

The Depot Manager, APSRTC, Miryalaguda Depot, Nalgonda District..

…PETITIAONER

and

The labour Court-III, Hyderabad represented by its Presiding Officer and another.

…RESPONDENTS

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O R D E R

Aggrieved by the award of the Labour Court-III, Hyderabad, in I.D.No. 290 of 1994 dated 06-08-1997 directing the petitioner herein to reinstate the 2nd respondent into service with continuity of service with half attendant benefits but with stoppage of three increments with cumulative effect, and without back wages, the present writ petition is filed.

The 2nd respondent was a conductor in the petitioner-corporation. On 05-06-1994, while he was conducting Bus No. AP 9Z 940 on route Eadigodda night-set bus, a surprise check was exercised by the T.T.Is of Divisional Enforcement Squad, Nalgonda at 19.50 hours and another check was conducted at 07.45 hours on 06-03-1994. On both these occasions the T.T.Is found certain cash and ticket irregularities. The petitioner was issued charge memo with the following charges.

i) "For having collected the requisite fare amount of Rs. 6/- from individual passengers @ Rs. 2/- each and issued the used tickets bearing Nos. 308/66444 with no last digit of Rs. 2/- denomination

Having punched on stages 1 and 3 as valid from 1 to 3 stages and a ticket bearing No. 308/664460 having no punch marks and having been issued at Stage No.11 as per S.R. and another ticket bearing No. 233/022861 of Rs. 2.75 ps., having been issued at Miryalaguda i.e, Stage No.1, with punch marks as stage Nos. 1 and 4 who boarded his bus at Chintalapalem and alighting at Nellikal i.e. Ex-stages 13 to 11 which constitutes misconduct under Reg. 28 (xxiii) of APSRTC Employees (Conduct Regulations 1963)

ii) For having collected the requisite fare amount of Rs.5.50 ps. from two individual passengers, at the rate of Rs. 2.75 ps each who boarded at Nayakal Thanda and alighting at Nellikal i.e. Ex-stages 14 to 11, and issued used and invalid tickets bearing Nos. 303/664456 which last digit was torned and not visible of Rs. 2/- denomination having punch marks at stage 5 and 7 and shown in the SR No. A2/3174284 as having been issued at stage No. 7 and another ticket No. 082/272695 of Rs. 5.25 ps denomination having punched on stages 3 and 9 which was shown in the S.R. as having been and issued at stage No.1 i.e Miryalaguda which constitutes misconduct under Reg. 28 (xxiii) of APSRTC Employees (Conduct) Reg. 1963.

iii) For having collected Rs. 1.50 ps. from one passenger who boarded the bus at Gudumudaka and was found alighting at Nellikal Ex-stages 12 to 11 towards requisite fare and failed to issue tickets which amounts misconduct under Reg. 28 (vi) (a) of APSRTC Employees (Conduct) Regulations, 1963.

iv) For having closed in the SR the ticket tray numbers of all denominations upto stage No.11, upto the place of check without completing ticket issues/issuing valid tickets which amounts to misconduct under Reg. 28(xxv) of APSRTC Employees (Conduct) Regulations.

v) For having been found in possession of excess cash of Rs.28.50 ps in the bus cash at the time of check at Nagarjunasagar i.e. Stage No.8 on 6-3-1994 without any proper explanation which constitutes misconduct under

Reg. 24 of APSRTC Employees (Conduct) Regulations, 1963.

On the explanation of the 2nd respondent, not being found satisfactory, a regular departmental enquiry was ordered and, after completion of enquiry, the Enquiry Officer in his report held the 2nd respondent guilty of the charges. A copy of the enquiry report was furnished to the 2nd respondent and his representation to the findings of the enquiry were called for, as also to show cause against the proposed punishment of removal from service. Thereafter, the Depot Manager, after careful consideration of the entire material on record removed the petitioner from service vide order dated 21.09.1994. Aggrieved thereby the 2nd respondent approached the Labour Court-III, Hyderabad, by way of an application under Section 2-A(2) of the Industrial Disputes Act.

The Labour Court upheld the validity of the domestic enquiry by order dated 03.02.1997. Thereafter, while exercising jurisdiction under Section 11-A of the Industrial Disputes Act, the Labour Court held the charges leveled against the 2nd respondent were grave in nature and that the charges were proved. On the quantum of punishment the Labour Court, taking into consideration the plea of the 2nd respondent that he be given another chance to reform himself, and taking into consideration that the quantum of amount involved was only Rs. 13/-, was of the view that the punishment of removal from service was too

harsh and disproportionate to the misconduct committed. Therefore, in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act, the Labour Court modified the punishment setting aside the order of removal and directed reinstatement of the petitioner with continuity of service and half attendant benefits but on stoppage of three increments with cumulative effect and without back wages.

Sri V.T.M. Prasad, learned Standing Counsel for the petitioner, would contend that, having held the charges levelled against the 2nd respondent were established, the Labour Court had grossly erred in showing undue lenience and misplaced sympathy in interfering with the punishment, of removal from service, imposed for proved charges of corruption including misappropriation of public funds. Learned counsel would contend that, while the amount of misappropriation might not be very large, the fact remains that the 2nd respondent had collected bus fare from the passengers, had issued used tickets and that the action of the 2nd respondent was a conscious attempt to misappropriate revenues and funds of the petitioner-corporation. Learned counsel would contend that, while the Labour Court has been conferred power under Section 11-A of the Industrial Disputes Act, to interfere with the quantum of punishment, such power should not be exercised as a matter of course or on grounds of misplaced sympathy.

I find considerable force in this submission of Sri V.T.M. Prasad, learned Standing Counsel for the petitioner-corporation. The nature

and extent of punishment to be imposed for proved acts of misconduct is, ordinarily, in the employer's realm. While the Labour Court has jurisdiction, under Section 11-A of the Industrial Disputes Act, to interfere with the quantum of punishment, and to substitute the punishment imposed by the employer with another, such exercise of jurisdiction under Section 11-A of the Industrial Disputes Act ought not to be as a matter of course or on grounds of misplaced sympathy. It is not the quantum of the amount misappropriated but the very fact that the 2nd respondent had indulged in acts of misappropriation which ought to have been the relevant criteria for the Labour Court to take into consideration in order to decide whether it ought or ought not to have interfered with the punishment. The fact that the 2nd respondent had sought an opportunity to be provided to reform himself cannot be a ground to thrust a corrupt employee on the petitioner-corporation.

In **Karnataka State Road Transport Corporation Vs. B.S. Hullikatti**[1], the Supreme Court observed that it is the responsibility of bus conductors to collect correct fares from the passengers and deposit the same in the Corporation, that conductors act in a fiduciary capacity, it would be gross misconduct if knowingly they did not collect any fare or the correct amount of fare and that, in such cases, interference with the punishment of dismissal from service was a case of misplaced sympathy by the Labour Court. In **Regional Manager, Rajastan State Road Transport Corporation Vs. Ghanshyam Sharma**[2],

the Supreme Court held that the proved acts amounted either to a case of dishonesty or of gross negligence and bus conductors, who by their actions or inactions, cause financial loss to the Corporation, are not fit to be retained in service. In **V. Ramana Vs. A.P.S.R.T.C.**[3], the Supreme Court held that Courts/Tribunals should not interfere unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal.

In the present case, the charges held established against the 2nd respondent are of having collected bus fares from passengers, to have issued already used tickets to them which, in effect, meant that the amount collected by the 2nd respondent-conductor towards bus fare, was intended to be misappropriated by him. The Labour Court ought not to have interfered with the punishment imposed for such acts of corruption. While it is true that it is ordinarily, not for this Court to sit in an appeal over the discretion exercised by the Labour Court under Section 11-A of the Industrial Disputes Act or to substitute the punishment imposed by the Labour Court with another, this Court would be justified in quashing the award of the Labour Court if it is satisfied that the punishment, as substituted by the Labour Court, is one which shocks its conscience. For proved acts of corruption, and misappropriation of public funds, the punishment, as substituted by the Labour Court, would necessitate interference by this Court. This Court

cannot be a silent spectator and force the petitioner herein to continue a corrupt employee in its service. Exercise of discretion by the Labour Court, under Section 11-A of the Industrial Disputes Act, in the facts and circumstances of the present case is a case of misplaced sympathy and is a matter where this Court must interfere. The award of the Labour Court, in I.D. No. 290 of 1994 dated 06-08-1997, is quashed. The writ petition is allowed. However, in the circumstances, without costs.

RAMESH RANGANATHAN, J

Dated: 26-04-2007
vp

[1] AIR 2001 SC 930
[2] 2002(1) LLJ 234
[3] AIR 2005 SC 3417